

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 2471 of 1985 (O&M)

Date of decision: May 14, 2009

Ram Dhan and others

.. Appellants

Vs.

Suraj Mal and others

.. Respondents

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. R.S. Chahar, Advocate for the appellants.
None for the respondents.

A.N. Jindal, J

This is appellants' regular second appeal against the judgment dated 9.5.1985 passed by the learned Additional District Judge, Karnal, whereby, he lost his appeal against the judgment dated 30.3.1984 passed by the Sub Judge Ist Class, Karnal, dismissing his suit.

The appellants-plaintiffs (herein referred as 'the plaintiffs') filed a suit for permanent injunction restraining the respondents-defendants (herein referred as 'the defendants') from interfering into his possession of bara comprised in Khewat No.369, Khatoni No.312, Rect.No.624 measuring ½ share of seven marlas situated at village Ballah Tehsil Karnal. The plaintiffs while stressing their claim on the basis of ownership submitted that they are the owners of ½ share and the defendants should not interfere in their possession.

In the written statement, the defendants denied the allegations and submitted that they had purchased the said bara from Nasiru son of Nasibuldin about 20 years back and they are in possession of the same by way of tethering their cattle. They had also constructed a menger therein.

From the pleadings of the parties, the trial court framed the following issues on 8.12.1982.

1. Whether the plaintiff are the owners in possession of the site in dispute?OPP
2. Whether the plaintiffs are entitled to the injunction as prayed for?OPP

3. Whether the suit is not maintainable in the present form?OPD

4. Relief.

Both the parties led evidence. The trial court dismissed the suit so as the Appellate Court.

The factual position is not denied to the extent that according to copy of Jamabandi for the year 1974-75, the plaintiffs are shown to be the owners in possession of ½ share of gair mumkin bara measuring 7 marlas and ½ share is in the name of Nasiru son of Nasibuldin. It is admitted by Ram Dhan (PW1) and Ganga Ram (PW2) that Nasiru had sold his ½ share. Ganga Ram (PW2) has also admitted that bara in question was previously owned and possessed jointly by Nasiru and his cousin Mithu.

In view of the admitted facts between the parties, the inevitable conclusion would be that both the parties are co-sharers in possession to the extent of ½ share each.

The substantial question of law which arises between the parties is “whether the plaintiffs are in exclusive possession of any portion of the bara, if so, whether they are entitled to seek injunction?”

As a matter of fact, though the plaintiffs are recorded in possession of the 'bara' to the extent of ½ share in the Revenue Records, yet, they are not recorded in exclusive possession of any portion of the bara, rather the records reveal that they were ousted from the bara which is proved from the admissions made by them in the application dated 29.7.1982. In para No.4 of the application, the plaintiffs admitted that the defendants had dispossessed them and also taken away the building material lying at the spot. Ex.D-1, copy of roznamcha dated 13.3.1982 further reveals that Kanungo had demarcated the Rect. No.624 in the presence of Ram Chand and Ganga Ram plaintiffs and found that Hukam Chand son of Ranjit had encroached upon 2 marlas of land towards west by constructing a house as well as by constructing a varandah towards the southern side, therefore, while examining the case from all angles, it could safely be concluded that the plaintiffs are not in possession of any portion of the bara. The plaintiffs filed a suit for entire khasra number and did not plead as to in which portion of bara they are in possession. No site plan had been produced on

the record to specify if they are in possession of any portion of the bara. Birkha Ram (PW4) has stated that the defendants are in possession of the plot towards the Eastern side while appellants are in possession of their share in the plot on the Western side. Kanungo has contradicted his stand by submitting report Ex.DA which reveals that area of the plot in dispute towards the Western side is in possession of Hukam Chand. Since the plaintiffs have failed to establish their exclusive possession of any portion of the bara, therefore, they were certainly not entitled to any relief of permanent injunction against the defendants. The substantial question of law as formulated above is bound to be answered against the plaintiffs.

Resultantly, finding no merit in the appeal, the same is dismissed. However, the parties are left to bear their own costs.

May 14, 2009
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(A.N. Jindal)
Judge